Proceeding: INQUIRY CONCERNING THE DEPLOYMENT OF ADVANCED TELECOMMU CAPABILITY TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHI Record 1 of 1
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Submission Type: CO Submission Status: ACCEPTED Viewing Status: UNRESTRICTED
Subject:
DA Number: Exparte Late Filed: File Number:
Calendar Date Filed: 09/14/1998 4:15:34 PM Date Disseminated: Filed From: INTERNET
Official Date Filed: 09/14/1998 Date Released/Denied: Initials:
Confirmation # 1998914226500 Date Filed:

DOCKET FILE COPY ORIGINAL

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SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

INTERNET FILING

98-146

9/14/98

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a	)	CC Dkt. 98-146
Reasonable and Timely Fashion, and	)	
Possible Steps to Accelerate Such	)	
Deployment Pursuant to Section 706	)	
of the Telecommunications Act of 1996	)	

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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September 14, 1998

SUMMARY

The members of ALTS commend the Commission for adopting the NOI and the accompanying Memorandum Opinion and Order and Notice of Proposed Rulemaking ("Advanced Wireline Services NPRM"). The Commission's obligations under Section 706 of the Telecommunications Act of 1996 are vitally important to the Nation's commerce and economy, and the facilities-based CLECs stand ready to help the Commission as it seeks to further the deployment of advanced telecommunications services and facilities.

As ALTS has indicated previously, the best way the Commission can encourage the deployment of advanced telecommunications capability is to ensure that all incumbent carriers comply with the market-opening provisions of the Telecommunications Act of 1996. As long as the providers of monopoly-provisioned services and facilities must make those services and facilities reasonably available to all other carriers, a vibrant, competitive market for advanced telecommunications services will develop.

In forming its policies pursuant to Section 706, the Commission should ensure that whatever actions it takes are technology-neutral. In addition, the Commission must guard against adopting reporting or other administrative requirements that will put an undue burden on emerging competition.

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COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Notice of Inquiry ("NOI") released August 7, 1998, in the above-referenced proceeding, the Association for Local Telecommunications Services ("ALTS") hereby files its Comments.

The members of ALTS commend the Commission for adopting the NOI and the accompanying Memorandum Opinion and Order and Notice of Proposed Rulemaking ("Advanced Wireline Services NPRM"). As the Commission is well aware, in May of this year ALTS filed a Petition for Declaratory ruling concerning various measures the Commission should take to promote the introduction of advanced telecommunications services to the American people as mandated by

Section 706 of the Telecommunications Act of 1996 (the "1996 Act").[1] In the Advanced Wireline Services NPRM, the Commission considered many of ALTS' proposals, and issued a number of the rulings that ALTS had sought.[2] In addition to these Comments, ALTS will submit comments on the Advanced Wireline Services NPRM on September 25, 1998, and, more particularly, on the specific proposals relating to separate subsidiaries for the provision of advanced services by incumbent local exchange carriers ("ILECs"), proposals relating to collocation, and the proposals relating to loop unbundling. ALTS' comments on the Advanced Wireline Services NPRM should be read in conjunction with these current Comments.

I. WHILE SECTION 706(b) REQUIRES THE COMMISSION TO MONITOR THE AVAILABILITY OF ADVANCED TELECOMMUNICATIONS SERVICES, THE

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[1] Petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78 (filed May 27, 1998).

[2] Among other things, the Commission agreed with ALTS that the interconnection, collocation, unbundling and resale requirements of Section 251, 252 and 271 of the 1996 Act apply fully to digital and broadband data services and facilities.

COMMISSION MUST GUARD AGAINST ADOPTING ANY REPORTING REQUIREMENTS THAT WILL PUT A BURDEN ON EMERGING COMPETITION.

The instant inquiry has been initiated pursuant to Section 706(b) of the Telecommunications Act of 1996.[3] Under that section the Commission must make an assessment of the availability of advanced telecommunications services to all consumers. In addition, it is clear that Congress intended that the Commission "regularly" review the state of advanced telecommunications capability to insure its availability to all Americans. If the Commission determines that advanced telecommunications are not available to all Americans, the Commission is required to take action to accelerate deployment of such capability. These requirements are fully appropriate, and the members of ALTS support them.

Based upon these statutory requirements, the Commission has

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[3] Section 706(b) provides:

> The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

asked in this proceeding for commenters, both carriers and manufacturers, to discuss in detail their capabilities and plans with respect to high speed data services. As a trade association ALTS does not collect the specific information that the Commission is seeking on a regular basis, and ALTS expects that much of the information the Commission is seeking will come from the carriers themselves. Accordingly, ALTS is submitting general information about competitive local exchange carriers and their incentives in section II, infra.

In addition to seeking specific information in this proceeding, the Commission has asked how, in general, it should collect information to enable it to determine whether advanced telecommunications capability is being deployed in a reasonable and timely manner. In answering this question the Commission should be guided by two principles: (1) the Commission should ensure that whatever information it seeks from industry is targeted and limited to the minimum amount necessary to satisfy its statutory obligations; and, (2) that whatever information it seeks will not be overly burdensome for carriers or others.

The Commission should not employ this section of the 1996 Act to require information from emerging companies that may lack resources to reply to numerous or burdensome requests for information, nor should it use this section to impose major new reporting requirements on carriers. The Commission should instead continue to be mindful of Congress' clear intent to encourage emergent companies via deregulatory actions wherever possible.

The Commission already has a rulemaking proceeding that proposes to require carriers to provide some of the information that would be needed to permit the Commission to monitor the deployment of advanced telecommunications capability without requiring voluminous additional information. See In re Local Competition Survey, CC Docket 91-141 (NPRM released May 8, 1998).

While the Commission's proposal for the collection of information in that proceeding might not fully discharge the Commission's need here for information to assess the availability of advanced telecommunications capacity under Section 706, ALTS proposed in that proceeding a number of small modifications of the proposed information requests could enable the Commission to obtain sufficient information for the purposes of Section 706. In addition, the changes suggested by ALTS in that proceeding would allow the Commission to make determinations as to the reasons that competition in advanced services may not be progressing as rapidly as some would expect.[4] If the Commission were to adopt in the Local Competition Survey rulemaking the changes proposed by ALTS,[5] the Commission would be well

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[4] In its Comments in Docket 91-141 ALTS stated:

> "The Commission should, for example, use these reports to tract the development and deployment of advanced and broadband telecommunications services. . . . By tracking the growth of digital versus analog lines and voice versus data switches, for example, the Commission would be in a much better position to make the decisions that it needs to make relative to actions taken pursuant to Section 706.
>
> "The Commission's information collection should also be designed to gather the information that will most readily disclose reasons why competition may not be developing in areas or services of prime concern to most consumers. . . . Therefore, the Commission should focus on information relating to collocation and the use of unbundled loops, rather than on dedicated circuits."

ALTS Comments in CC Dkt. 91-141 (submitted June 8, 1998). Pursuant to paragraph 89 of the NOI, ALTS has attached a copy of its comments in CC Dkt 91-141.

[5] Other suggestions made in that proceeding were that the

positioned to monitor the deployment of advanced telecommunications services without creating redundant information gathering requirements.

II. CLECS HAVE INVESTED AND CONTINUE TO INVEST IN BRINGING ADVANCED TELECOMMUNICATIONS CAPABILITY TO ALL AMERICANS.

Commission should not require small carriers to file reports, and that filings should be made semi-annually, at most. Id.

In its NOI, the Commission has asked "who is able and motivated to deploy advanced services soon, especially to residential consumers?"[6] In ALTS' petition filed May 27, 1998, ALTS detailed some of the actions that its members, facilities-based CLECs, have taken to bring advanced telecommunications services to all Americans. To briefly reiterate, CLECs were the first industry players to deploy fiber rings, and have been leaders in the introduction of new technologies such as asynchronous transfer mode ("ATM"), frame relay, and xDSL technologies into the national telecommunications infrastructure. Since the passage of the 1996 Telecommunications Act, CLECs have raised between 15-20 billion dollars in capital, primarily for such infrastructure investment.

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[6] NOI at para. 8.

With respect to deployment of fiber, the Commission has itself recently released its annual report on fiber deployment.[7] That report states that the amount of fiber owned by competitive access providers[8] "has been growing rapidly."[9] In addition, review of the information contained in the report shows that while total fiber miles owned by CLECs is still relatively small compared to the established interexchange carriers and incumbent local exchange carriers, the percentage increase in fiber deployment was greater for the CLECs than for any other segment of the industry. The Fiber Deployment Update also concluded that "In some cases, CAPs appear to have motivated local telephone companies to . . . serve larger customers by constructing their own redundant facilities and fiber rings. In this . . . regard, we note that the Bell operating companies reported construction

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[7] J. Kraushaar, Fiber Deployment Update End of Year 1997 (released September 4, 1998).

[8] As used in the report, the term competitive access provider appears to encompass what would otherwise be known as facilities-based competitive local exchange carriers. See Fiber Deployment Update at 38.

[9] Id. at 39.

of fiber ring redundancy arrangements in many of the very same cities where CAP systems currently compete with them for large business customers."[10]

[10] Id.

The Commission has expressed its particular concern with the provision of advanced services to residential consumers. The Commission must recognize that any advanced telecommunications technology or service is likely to appeal and be marketed first to businesses and, after being proven in that market, introduced to residential consumers. CLECs have indicated that they are willing and able to provide service to residential consumers as soon as the cost of obtaining monopoly provisioned facilities (primarily the loop) from the ILECs is economically viable.[11]

III. THE COMMISSION MUST CONTINUE TO ENCOURAGE THE COMPETITIVE PROVISION OF ADVANCED TELECOMMUNICATIONS SERVICES AS THE PRIMARY MEANS OF ACCOMPLISHING THE GOALS OF SECTION 706.

In its NOI the Commission stated that it "intend[s] to rely as much as possible on free markets and private enterprise to deploy advanced services." This is entirely appropriate and something with which the members of ALTS wholeheartedly agree as long as two caveats are added: the first is that the Commission must recognize the ILECs continue to retain monopoly power over certain network elements needed to provision advanced data services. The second is that the Commission should recognize

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[11] See e.g., Comments of ACSI (now e.spire Communications) in In re Application by BellSouth Corporation for Provision of In-Region InterLATA Services in Louisiana, CC Dkt 97-231, at 5 (filed Nov. 25, 1997): "ACSI is interested in offering its switched facilities-based local services on a wider scale to residential customers in Louisiana when a deaveraged and truly forward-looking cost-based pricing structure and related UNEs is made available."

that the market for advanced telecommunications services will not be a competitive market unless the ILECs are held accountable for the obligations placed on them by the Telecommunications Act of 1996. It is simply premature for the Commission to rely on free markets, when there is no real competition at this time.

In the long run, the best way to encourage sufficient investment in advanced telecommunications services to all Americans is to encourage competition. Competition encourages greater investment, more innovation, more choice and, of course, price reductions for consumers.

In its NOI the Commission at paragraph 57 asks whether "'the race' to deploy advanced telecommunications capability is one that only one runner or a few runners can win (that is, a natural monopoly or oligopoly)." The answer to that question is a resounding "NO", provided there is appropriate enforcement of the 1996 Act. The number of entities seeking to provide advanced telecommunications capabilities has grown significantly in the past two years. While not all of them will have the right mix of service, quality and prices to survive in a competitive market, it is clear that as long as access to monopoly provisioned elements is fair and reasonable, advanced telecommunications capability will be provisioned by many companies. The market itself (and the assumptions underpinning the Telecommunications Act itself) have already answered the question posed.

IV. THE COMMISSION SHOULD ESTABLISH A PRINCIPLE OF NEUTRALITY WITH RESPECT TO TECHNOLOGY IN ALL ITS RULEMAKING AND OTHER FUNCTIONS.

Anyone who has followed telecommunications and information technologies for any period of time will recognize that the technology that is touted this year may end up either preempted by an entirely different or new technology, not of use or of interest to consumers,[12] or too difficult or costly to implement. Innovation in telecommunications capacity and information processing is happening at lightening speed, and there does not appear to be any indication that such innovation will decelerate in the near future.

At the same time, predicting exactly how and when innovations will emerge is even more difficult than predicting when or how the stock market will rise or fall. Because

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[12] It is interesting to note that in the NOI the Commission stated that in the future, services may include "real-time video in place of telephony, so that families who connect the phone can not only talk to each other, but can see each other as well." NOI at para. 7. This may well happen, and it may happen very soon. However, the picture phone was an offering of AT&T in the 1970s, and there was very little interest in it. Consumers will, and should, dictate the offerings made by various participants in the telecommunications and information service markets.

innovation should be driven by technology and market demand, the Commission should make every effort to ensure that its regulations and any decisions that it makes does not favor one technology over another.

While the Commission should not favor one technology over another, this does not mean it should not take whatever actions, consistent with the Communications Act, may be necessary to enable competitive carriers to provide services that they seek to provide. The Commission should not on its own accord, for example, seek to increase the availability of xDSL as a solution for a perceived shortage of bandwidth to the consumer. At the same time, if there are barriers to the provision of services by competitive carriers, whether xDSL based or otherwise, then the Commission may and must remove those barriers. With respect to xDSL services, this means that the Commission must enforce all unbundling and other requirements relating to the loop and all electronics associated with the loop to enable carriers that seek to provide xDSL services to do so.

In addition to technological neutrality being an appropriate policy decision, it is legally mandated by the 1996 Act. As the Commission itself has recognized:

> The role of the Commission is not to pick winners or losers, or select the "best" technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.

Advanced Wireline Services NPRM at 4.

V. UNBUNDLING OF BOTH FACILITIES AND SERVICES ARE IMPORTANT TO INSURE THE PROVISIONING OF SERVICE BY AS MANY ENTITIES AS POSSIBLE.

The Commission should recognize that the best and most efficient way to promote competition and to protect consumer choice is to insure that the unbundling requirements of the act are interpreted so that competitive carriers are not foreclosed from providing any service that they seek to provide.

In the accompanying Advanced Wireline Services NPRM, for example, the Commission asks whether two different service providers should be allowed to offer services over the same loop with each provider utilizing different frequencies to transport voice or data over the loop (¶ 162). There is no technical reason why two different carriers could not offer services over the same loop. The only thing that would prevent such a split in the provision of service is if the ILEC refused to offer the electronics associated with the loop (e.g., at the DSLAM) as an unbundled network element. The Commission should insure that this type of maneuvering by the ILECs does not result in consumers being forced to take bundled services when there is no technical reason for doing so. To the extent possible, every network element should be available as a UNE so that competitors will be able to fashion their services in any manner that customers may wish.

In addition, the Commission asks whether there are reasons to depart from the longstanding prohibition of bundling transmission services on the one hand with, on the other, customer premises equipment and/or enhanced services. There are no policy or technical reasons for withdrawing from this requirement whatsoever. The prohibition has given consumers real choice in CPE, and has been largely responsible for the growth in that market while stimulating growth in the related telecommunications services market as well. Jettisoning this rule would decrease consumer choice. Therefore the rule should be maintained.

VI. AS A GENERAL MATTER MERGERS AND CONSOLIDATIONS WILL SLOW THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY.

The Commission has asked for comment on the effect of mergers and other consolidations on the deployment of advanced telecommunications capabilities. Obviously, any effects of mergers or acquisitions will depend upon the size and market power of the entities involved. As a general matter, however, consolidations, especially between ILECs, will slow the deployment of advanced telecommunications capability. While competitive carriers may gain a minor advantage and thus increase their deployment of advanced facilities and services while large companies are expending resources on the mechanics of such consolidations, in the long run the mergers of large ILECs will not be beneficial to the deployment of new facilities.

At the same time, the detrimental effects of mergers between large companies with significant market power can be relieved by the imposition of conditions on the merger. Just as the Commission imposed conditions on the Bell Atlantic NYNEX merger, the Commission can impose conditions on any other merger that will ensure that advanced telecommunications facilities, services and UNEs are widely and reasonably available to all entities.

VII. THE COMMISSION SHOULD REQUIRE ILECS TO PROVIDE ACCESS TO ILEC-OWNED INSIDE WIRE, AND SHOULD WORK TO ENSURE THAT CONSUMERS IN MULTI-TENANT BUILDINGS MAY OBTAIN SERVICE FROM THE CARRIER OF THEIR CHOICE.

One of the greatest problem facing our new competitors is the lack of reasonable access to private multi-tenant buildings. This access would include access to rooftops and inside wire facilities (including riser conduits, connecting equipment, ducts, elevator shafts or other suitable spaces). As the Commission is well aware, wireless carriers cannot provide service to customers in a building unless they can place a small antenna (usually about 12 inches in diameter) on the roof of the building and then carry the traffic from the antenna to the network interface device "NID" and, finally, from the NID to the individual customer. The pathway from the antenna to the NID often uses an elevator shaft or other similar unused space. From the NID, the wireless carrier uses the existing inside wire to reach the individual customer. Some of these areas and facilities are controlled by landlords and some are controlled by

the incumbent telephone companies.

New carriers sometimes are being denied reasonable access to the roofs, the pathways to the NID and the inside wire. Some landlords simply refuse access all together; more often than not, however, the landlord decides that although he will allow the new carrier to access the potential customer, he will insist upon very high nonrecurring and rental fees or some sort of free or reduced service to himself. This means that not only are carriers required to pay exorbitant fees, but enormous amounts of time and energy are wasted negotiating individual agreements. The incumbents rarely have to pay the same fees and, concomitantly, are not spending resources on lengthy negotiations with individual building owners. With respect to space under the control of the incumbents, many ALTS members are experiencing similar time consuming and costly delays.

These problems have been brought to the attention of the Commission in a number of proceedings: In re Telecommunications Services Inside Wiring, CS Dkt. 95-184; In re Recommendations on Commission Actions Critical to the Promotion of Efficient Local Exchange Competition, CCBPol 97-9; In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt 96-98. To date the Commission has not adequately addressed the issues raised. However, in pending petitions for reconsideration of CC Dkt 96-98, the Commission has squarely

before it a request, which, if granted, would provide substantial relief for competitive carriers. In its petition for reconsideration, WinStar has requested that the Commission clarify that utilities (primarily the incumbent LECs, but in accordance with the Act all persons satisfying the definition of "utility")[13] must provide CLECs "access to roof tops and related riser conduit under their control, at cost-based rates, in order to install . . . radio equipment in furtherance of the [wireless carrier's] transmission and distribution network." The Commission has more than sufficient authority to take this step under Section 224 (the pole attachment section of the Act) or under Section 251.

With respect to buildings where there is no utility on the roof or other necessary distribution facilities and Section 224 of the Act may not be implicated, there are a number of actions that the Commission could still consider taking to ensure that landlords do not place unreasonable burdens on the wireless

[13] Under the Act a "'utility' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." 47 U.S.C. § 224(a)(1).

carriers (or any other competitive service providers) ability to provide service. The thrust of the 1996 Act was to remove all obstacles to the provision of service by new entrants. Congress clearly intended that consumers have as wide a choice as possible in telecommunications providers.

In Section 207 of the 1996 Act, the Commission was directed to promulgate regulations to prohibit restrictions that impair a viewer's ability to receive over-the-air reception of television broadcast signals, multipoint distribution service, or direct broadcast satellite services. The Commission promulgated rules pursuant to this section in 1996. See IB Dkt 95-59 (adopted Aug. 6, 1996). Although it did not include all antennas similar in size to DBS antennas, ALTS believes that the Commission would have had the authority to do so pursuant to Section 706 and 4(i) of the Act. The Commission could commence a proceeding to adopt rules that establish that landlords may not unreasonably prevent their tenants access to facilities similar to those specifically named in Section 207.

Alternatively, should the Commission disagree with ALTS that it does not have the authority to establish a rule that landlords may not unreasonably prevent tenants access to such facilities, the Commission could work with NARUC and other organizations to ensure that state laws and regulations are clarified to ensure that tenants in multi-unit environments have the ability to